

Office Memorandum • UNITED STATES GOVERNMENT

TO : Files

DATE: 23 December 1948

FROM : [REDACTED]

25X1A

SUBJECT: Limitation of Liability in Bill of Lading

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OGC HAS REVIEWED.

1. Goods were shipped from Rosslyn, Virginia, to [REDACTED], on a Government bill of lading by the Railway Express Company. On arrival, it was discovered that the goods had been damaged to the extent of \$80.70. The carrier (Railway Express Agency) was notified of the damage and payment of other outstanding accounts was withheld pending settlement of the claim. The Railway Express Agency asserted that their liability was limited to \$50.00 in accordance with the terms of the standard express receipt. The fact that a Government bill of lading, rather than the commercial type, was used was pointed out to them and the carrier's liability to the full extent of the damages was claimed by this Agency. Railway Express replied that conditions 2 and 5 of the Government bill of lading provided that the same terms governing commercial shipments and the limited valuations specified in their tariff applied to the Government bill of lading in view of the reference therein to the commercial express receipt.

2. It can be accepted that the United States, in the course of its commercial transactions, is bound by the same practices which would govern an individual. (United States v. American Sales Corporation, 27 Fed. (2nd) 389, [1928].) Generally, the carrier is obliged to pay the full claim for any damages resulting from its negligence and a complete and unconditional release for the negligence of the carrier is void. (Woodburn v. Cin., N.O. & T. P. Ry. Co., 40 F. 731.) However, this rule, which is maintained in the interest of public policy, can be restricted by a valid limitation of damages when the shipper is given a choice of rates. (Union Pacific Railroad Company v. Burke, 255 U.S. 317 [1920].) When the rates are based on a stated valuation, it is established in common law that the compensation should be related to the risk, and a limitation commensurate with the rate will be upheld. (American Express Company v. United States, 60 Court Claims 429 [1925].) There are elements of estoppel in the situation and at least one court divorced it from the theory of consideration. Simply, it has been stated that the "rate must be tied to the release". (San Giorgio I. Rheinstrom Bros. Company, 294 U.S. 494 [1934].)

3. When more than one rate is available and the stated value of the goods at the lower rate can be tied to the "release valuation", the shipper is bound by that ceiling on damages. In passing, it should be noted that the shipper's knowledge of the rate which the carrier is lawfully entitled to charge is conclusively presumed. (Kansas City Southern Railway Co. v. Carl, 227 U.S. 639 [1912].) The shipper's acceptance of the express receipt containing a limitation of liability which is related

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to a graduated rate is not contrary to the provisions of the Carmack Amendment of June 29, 1906, to the act of February 4, 1887, 49 USCA Section 20 (Wells Fargo and Co. v. Neiman-Marcus Co., 227 US. 469.) In addition to the fact that the shipper is conclusively presumed to have knowledge of the carrier's rate, it should be noted that the conditions in the bill of lading are binding on the shipper simply by acceptance of the carrier's service and the shipper's signature on the bill of lading is not necessary. (American Railway Express Co. v. Lindenberg, 260 U.S. 584 [1922].)

4. There is no indication on the face of the bill of lading that an evaluation was given to the property shipped. The invoice value of \$350.00 is stated only in the report of loss on the back of the bill of lading and apparently was not stated at the time of shipment. Nor was any provision made for payment of evaluation in excess of that provided in the tariff limitations. In unpublished opinion B-38529, dated 26 May 1944, the Comptroller General limited recovery to the tariff ceiling in a situation identical to this. Rule 13C of ICC 4500, Official Express Classification No. 33, provides for a limitation of liability in the shipment of adding machines of \$50.00 for any amount under 100 pounds and \$.50 per pound for any weight in excess of 100 pounds. In view of the Comptroller's opinion on this particular point, it appears that the Express Company's contention is valid and that our claim for damages should be reduced from the actual amount of \$80.70 to the tariff maximum of \$50.00.

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